

**U.S. Institute for Environmental Conflict Resolution  
of the Morris K. Udall Foundation**

***OVERVIEW***

March 2001

The U.S. Institute for Environmental Conflict Resolution (the Institute) is a federal program established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in environmental disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution (ECR), and can help parties in selecting an appropriate neutral.

During its second year of operation (FY 2000), the Institute was involved in over 60 cases and projects, including mediation cases, process facilitation, conflict assessments and process designs, dispute system designs, training design and delivery, case consultations, and case referrals.

The Institute's work has extended into 23 different states, including virtually all of the Western states along with Alaska, Connecticut, Florida, Hawaii, Maryland, Massachusetts, New Jersey, New York, Oklahoma, Tennessee, Texas, as well as Washington, D.C. and Puerto Rico. Several projects are national or multi-state in scope. The issues involved in these cases and projects include wildlife and wilderness management, recreational use of, and access to, public lands, endangered species, marine protected areas, watershed management, ecosystem restoration, wetlands protection, and urban infrastructure planning. The majority of the inquiries have come from federal agencies (headquarters and regional offices), but they also have come from federal district courts, state government agencies, tribes, and environmental groups.

The Institute has developed institutional arrangements with more than ten federal agencies; co-sponsored a major national conference on Alternative Dispute Resolution (ADR) and Natural Resources; hosted the Federal ECR Roundtable for ADR specialists at federal agencies; and launched a Federal ECR Partnership Program to support innovative and effective applications of ECR. Through these efforts, the Institute is providing useful services to federal agencies and is proving to be a valuable resource for all parties in conflict over environmental and natural resource issues.

During FY 2000, professional ECR services were provided directly by Institute staff or through contracts with over 30 private ECR practitioners. These services were paid for through interagency agreements or other institutional arrangements with federal agencies, including U.S. Environmental Protection Agency (EPA), U.S. Department of the Interior (DOI), U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Land Management (BLM), U.S. Department of Agriculture - Forest Service (USDA-FS), U.S. Navy, U.S. Air Force, Federal Highway Administration (FHWA), the Federal Energy Regulatory Commission (FERC), and U.S. Department of Justice (DOJ). Selected cases and projects are presented below.

### Mediation Cases

- \$ *Jarbidge Road (Elko, Nevada)*. This active case concerns the closing of a road in the Humboldt-Toiyabe National Forest in northeastern Nevada and the potential impact of repairing the road on water quality in an adjacent stream and on an endangered species. This case was ordered to the Institute by the federal district court in Nevada. The Institute assisted the parties, some of whom were not represented by counsel, in jointly selecting a mediator, negotiating the initial conditions for mediation, and contracting with the neutral.
- \$ *Washington Navy Yard NPDES Permit (Washington, DC)*. This successfully mediated case involved an administrative appeal regarding the issuance of a water pollution discharge permit for the Washington Navy Yard. The mediation involved EPA, the Navy and the environmental organization, Earthjustice. Institute staff facilitated the parties' selection of a mediator, with whom the Institute then contracted.
- \$ *Sabino Canyon Target Range (Tucson, Arizona)*. The Institute assisted negotiations between the Coronado National Forest and the Tucson Rod and Gun Club regarding the design requirements for a target range. The Club is proceeding to submit a special use permit application and the Institute is on call to assist in any further deliberations within the formal permitting context.
- \$ *Dyer Wetlands (Bridgewater, Massachusetts)*. The Institute mediated a settlement of a Clean Water Act civil enforcement action involving the filling of wetlands on private land in Massachusetts. The EPA and the landowner reached an agreement confirmed in a consent decree regarding several technical and regulatory issues pertaining to wetland areas on a cranberry farm.

### Convening, Facilitation, and System Design Projects

- \$ *Northwestern Hawaiian Islands Public Input Process*. The U.S. Departments of the Interior and Commerce, along with the Council on Environmental Quality, requested the assistance of the Institute in designing and conducting a public input process. The public input process was stipulated by the President in his directive to the two Secretaries to develop a joint recommendation for a comprehensive management regime for ensuring strong and lasting

protection of the coral reef ecosystem of the Northwestern Hawaiian Islands. Within the 90-day deadline established by the President's directive, the Institute, partnering with the Hawaii Justice Foundation with several Hawaii-based facilitators, conducted and documented input from seven public "visioning sessions" attended by over 430 people in Hawaii and Washington, D.C. The Institute received over 1,000 public comments which were summarized in the public input report prepared for the Secretaries.

- \$ *NEPA Streamlining for Federal Highway Projects (national).* Federal transportation legislation (TEA-21) provides for interagency cooperation aimed at improving the quality and efficiency of environmental reviews of transportation projects nationwide. The Institute is developing a dispute resolution system for state and federal agencies involved in "environmental streamlining" efforts. The system includes an elevation procedure for disputes to the Secretary of Transportation, a general guidance document for agencies on conflict resolution, the selection and training of a cadre of qualified neutrals to help implement the system. Steve Lee, a facilitator experienced with transportation issues, is assisting with the project under contract to the Institute along with several other dispute resolution experts.
- \$ *Everglades Restoration (South Florida). Conflict Assessment and System Design (South Florida).* The Institute co-facilitated two Everglades Task Force meetings that focused on dispute resolution and draft federal legislation for the South Florida Ecosystem Restoration Program. Partnering with the Florida Conflict Resolution Consortium, the Institute is assisting in designing a system to effectively manage interagency and intergovernmental conflicts regarding the restoration effort. In addition, the Institute is conducting an assessment of federal interagency conflicts focused primarily on scientific issues.
- \$ *Bison and Elk Management: Situation Assessment and Process Design (Jackson, Wyoming).* Institute staff conducted a situation assessment to engage the public in planning for bison and elk herd management in the upper Snake River watershed encompassing the National Elk Refuge, the Grand Teton National Park, and the Bridger-Teton National Forest. Assisting the Institute were the University of Wyoming's Institute for Environment and Natural Resources and the Meridian Institute. The project also involved close coordination with the state of Wyoming and the Wyoming Game and Fish Department as well as consultation with eleven area Native American tribes. Over 130 individuals and organizations were interviewed over a four-month period. Currently, the agencies are conducting a pre-scoping process prior to initiating a formal NEPA process.
- \$ *Barry M. Goldwater Range Assessment and Process Design (southwestern Arizona).* Congress recently authorized the continuation of the withdrawal of the Barry M. Goldwater Range for military use and gave joint responsibility for planning and management of natural and cultural resources to the Air Force and the Marines. The Institute developed a strategy for public involvement regarding an Integrated Natural Resource Management Plan for the Range and a plan for interagency coordination with parallel resource planning processes being conducted on neighboring federally owned lands. This strategy included a consultation plan for Native American tribes in the area.

\$ *Critical Habitat Determination and Designation.* The Institute and a facilitation team led by Lucy Moore completed this project for USFWS. The project involved extensive interviewing of litigants and other parties concerned with how critical habitat for endangered species is determined and designated by USFWS. Two national workshops were held and a summary report issued. This project has informed USFWS's development of guidelines on critical habitat.

#### Roster System and Referral Activity

The roster and related referral system has been in place since February 2000. The roster is the Institute's primary source for selecting its sub-contractors and for referring neutrals to parties in dispute. As of March 2001, there were 142 qualified practitioners on the Institute roster located in 36 different states. Their experience ranges from mediation of court-referred environmental disputes to facilitation of complex consensus-building processes and policy dialogues. On average, these practitioners have handled approximately 29 cases (the range varies from 5 to 150 cases) prior to their listing on the roster. The Institute continues to recruit roster members, particularly for geographic balance and diversity in professional experience.

During FY 2000, over 30 practitioners provided services on contract with the Institute, most of whom are on the roster. In addition, the Institute's roster manager, Joan Calcagno, has provided selected profiles of roster members for over 30 cases and projects since she began searching the roster database in February 2000. In addition, 20 EPA ADR personnel have had direct access to search the roster since August 2000.

#### Training Services

The Institute has provided several training seminars and workshops to users of ECR, sponsored primarily by federal agencies, among them DOI, EPA, USDA- FS, and FERC. One-hour training orientation sessions have also been provided to a number of agencies, as were training activities in the context of conference panels and workshops provided by Institute staff. Additional requests for training were referred by the Institute to other providers. In FY 2001, staff will investigate the potential and feasibility for a standing training program at the Institute.

<b>Program Delivery</b>
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In addition to the case and project related professional services outlined above, the Institute staff works on a variety of educational initiatives and demonstration programs consistent with its mission as a federal program to increase and improve the appropriate use of ECR by federal agencies and other stakeholders.

#### ADR and Natural Resources Conference

The Institute co-sponsored a national conference on ADR and Natural Resources with DOI, USDA –

FS, and The University of Arizona's Udall Center for Studies in Public Policy in May 2000. The two-and-a-half day conference drew over 425 attendees from across the nation and from Mexico and Chile, including federal and state government staff, tribal representatives, environmentalists, natural resource users, and ADR practitioners. Close to 150 people attended several eight-hour pre-conference training sessions. Five conference plenary sessions and fifty-seven panel sessions generated tremendous enthusiasm for the diversity of work being conducted in the field of environmental conflict resolution, underscoring the potential the Institute has to contribute to the field. An extensive conference evaluation revealed the conference to be an overwhelming success and the interest in future conferences to be very strong. The proceedings from the May conference are now available from the Institute website and on CD.

### The 9<sup>th</sup> Circuit Demonstration Project

In cooperation with the Western Justice Center Foundation and the U.S. District Court in Oregon, the Institute has been conducting a pilot program for environmental mediation in the Oregon federal court. Six cases have gone into mediation through the pilot, which is using a panel of Oregon-based neutrals. The project has been coordinated in Oregon by Elaine Hallmark, an attorney-mediator based in Portland, who has reviewed more than 30 cases for possible referral to mediation. The possibility of other pilots or court-referred environmental cases is being explored.

### Federal ECR Partnership Program

This program provides financial support and in-kind assistance for specific cases or projects being sponsored by federal agencies. An agency must provide at least 50 percent of the project funding and meet several selection criteria to qualify for Institute co-sponsorship. The program is designed to increase awareness and use of ECR within the federal government; provide incentives and guidance for the effective use of ECR; and encourage innovative applications and demonstration projects. The Institute will be drawing on its capitalization fund to place over \$400,000 per year over the next three years through this program. The first four demonstration projects funded through this partnership program are:

- \$ *Fire Island National Seashore Negotiated Rulemaking (Fire Island, New York).* The Institute is assisting Fire Island National Seashore, a unit of the NPS, to develop new off-road driving regulations through the use of a multi-stakeholder negotiated rule making process. Fire Island is a roadless park with over 4000 private homes on it. Current regulations are viewed as inadequate to protect the nesting sites of the endangered Piping Plover and the island's fragile dune system.
- \$ *Tongass National Forest Aircraft Noise Conflict (Juneau, Alaska).* The USDA - FS grants permits for helicopter overflights and landing on the Juneau Icefield Glacier in Tongass National Forest. Recent requests for permits would more than double landings by 2004. Noise associated with helicopter use is problematic for both users of the National Forest and for residents of Juneau. The Institute is helping to fund a collaborative problem-solving process focused not only on the request for more landing permits (and the development of an

Environmental Impact Statement for the request), but also on the larger issues of noise pollution in the Juneau area.

- \$ *Dillon BLM Resource Management Plan (Dillon, Montana).* The Montana BLM Office is developing a resource management plan for BLM land around Dillon, near the Montana and Dakotas border. Current discussions about resource use in this area have become contentious and polarized. The Institute is providing assistance for a situation assessment and process design that will precede a multi-stakeholder collaborative effort to develop the plan. This represents the first time the Montana BLM has attempted a non-traditional approach for stakeholder involvement in resource planning.

#### ECR Participation Support Program

This program will be geared to non-federal stakeholders, providing in-kind and financial support for ECR demonstration projects. Two precursors to this program include:

- \$ *Cormorant Management in Eastern Lake Ontario.* At the request of New York State's Department of Conservation, the Institute co-sponsored a conflict assessment regarding the impact of double-breasted cormorant (a seabird) populations on declining bass fisheries in eastern Lake Ontario. The assessment report was completed by Gregory Sobel and Susan Senecah on contract to the Institute.
- \$ *Facilitation of Channel Islands Marine Reserve Process.* The Institute is providing process design and co-facilitation services for a multi-stakeholder planning process jointly convened by the Channel Islands National Marine Sanctuary and the California Department of Fish and Game. The purpose of this project is to develop consensus-based recommendations for establishing a "no-take" Marine Reserve in the sanctuary

#### Program Evaluation

The Institute is setting up a self-administered program evaluation to track and provide valuable information on the performance of the Institute, its staff, and contractors to guide internal improvements and inform potential parties and supporters of ECR on case and project outcomes. The evaluation system design is being developed in association with the Policy Consensus Initiative and two state dispute resolution programs (Massachusetts and Oregon). The long-term objective of this cooperative initiative is to develop a general program evaluation framework that can be used by other federal and state agencies providing ECR assistance.

#### Managing Scientific and Technical Information in Environmental Cases

Together with the Western Justice Center Foundation and Resolve, Inc., the Institute co-sponsored and participated in the research, drafting, and publication of a manual of the principles and best practices for mediators and facilitators involved in science-intensive environmental disputes. This report was premiered at the May conference and is now available electronically from the websites of all three co-

sponsors.

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